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are a little ineffectual in the premises. One does not make, guide, or suppress revolution by these devices.

The student of political science is certain to be interested in the author's belief that the object of the competitive system is not so much to provide an efficient civil service as to remove the temptation to use office for party power. One might well ask: is this a reform of our political parties or of our administrative system? The suggestion that it is the former accords with the analysis just made of the obsolescence of the problem itself. The older parties may be cured of their bad practices by other means than the "merit system."

It cannot be too clearly repeated that this is a volume in a thousand for students of American historical politics.

P. B. P.

Life of John Marshall. By Albert J. Beveridge. In four volumes. Volume III, *Conflict and construction, 1800-1815*; volume IV, *The building of the nation, 1815-1835*. (Boston and New York: Houghton Mifflin company, 1919. 644; 668 pp. \$10.00 net)

With these volumes Mr. Beveridge brings to completion his monumental biography of Chief Justice Marshall, thus securely linking his name with one of the great republicans of the history of the republic. The excellencies of the previous volumes are again in evidence here — thoroughness of research, skill in summarizing and arranging a vast accumulation of material, dramatic narrative. Moreover, the principal fault of those volumes almost disappears in these: Marshall is now a great enough figure in his own right to dominate the elaborate background provided for his activities.

Volume III opens with the beginning of Marshall's judicial career. The federal judiciary is under fire from the triumphant republicans; that it emerged from the ensuing contest, not unscathed, but body-whole, was due in great part to Marshall's political skill. The writer of this review pointed out some years ago that the case *Marbury v. Madison* bore all the earmarks of "a political coup." Mr. Beveridge accepts this analysis, and is able, moreover, to confirm it by a striking discovery of his own — a letter from Marshall to Justice Samuel Chase bearing the date, in the original, of January 23, 1804 (3:176-177). Unquestionably, however, the 1804 is old-style for 1805, for the document was clearly penned while Chase's trial from impeachment was just getting under way. If this impeachment succeeded, Marshall saw himself and the entire existing bench swept from office, and their places taken by republican sympathizers with the doctrines of the Virginia and Kentucky resolutions. How was the danger to be averted? Why, congress was to give up the right of impeachment and to receive instead the right to review the decisions

of the supreme court! For the threatened recall of judges was to be substituted the recall of their decisions.

The second half of volume III is given over, for the most part, to a detailed account of the Burr conspiracy and Burr's subsequent trial for treason. This is the vulnerable part of Mr. Beveridge's work. In his effort to defend Marshall's handling of the law case, he has felt it necessary to make himself also the champion of Burr, and so has fallen easy victim to Mr. McCaleb's brilliant special pleading. The whole question is, of course, far too involved to warrant an attempt at fresh discussion of it within the limits of a review. On the crucial question of whether an "overt act" has been shown against Burr, I venture to refer the reader to relevant pages of my *John Marshall and the constitution*. Mr. Beveridge's treatment of this matter clearly does not meet the contentions which I there advance. Nor does he give adequate heed to the fact that the extraordinary line of reasoning developed by the chief justice in his famous opinion received no support from the arguments of any one of the seven or eight excellent lawyers on either side of the case.

It is Mr. Beveridge's task in his final volume to provide Marshall's great constitutional decisions with their historical setting. The task is achieved with enviable success. Chapter I of the volume contains another noteworthy find, a letter from Marshall to Robert Smith of Baltimore, dated July 27, 1812. The writer is obviously posturing, awaiting the descent of the presidential thunderbolt. Fortunately it did not descend; and from this time on Marshall drops all his political nonsense.

Noteworthy, too, is the fresh account given in chapter III of the Fairfax litigation, a fearfully complex topic which is handled with great skill and clarity and upon which the analogous Granville case is made to throw an interesting sidelight. Chapter IV on "Financial and moral chaos" is so excellent and so much of a contribution that one is tempted to urge that it be published as a separate brochure. Incidentally, it brackets "the bank case" (*McCulloch v. Maryland*) with the Dartmouth college case in an instructive way. The handling of the Dartmouth college case itself, however, is not so entirely unexceptionable. Mr. Beveridge's strictures on Shirley's invaluable volume (4:258-259 footnote) seem a bit severe, though he is probably right in challenging the assertion (Shirley, p. 237) on which Mr. Lodge bases his cock-and-bull story of Webster's argument before the court. Elsewhere (footnote, p. 233) Mr. Beveridge challenges Harvey's anecdote to the effect that, since the college was founded for the education of Indians and none had attended for some time, Webster advised President Brown to send for some, which was done, albeit the aborigines escaped before any use could be made of their presence. "There is not the slightest evidence to support this absurd

tale," says Mr. Beveridge. Nevertheless, it is a fact that one of the charges levelled against the trustees of the college by the legislative committee whose report led to the invasion of the charter, was "refusing to apply any of the funds of which they have control, to the instruction of Indians" (Lord, p. 71), and it is to be supposed that some effort was made to invalidate this criticism. On the other hand, Mr. Beveridge is unduly tender of old Professor Goodrich's famous account of Webster's peroration. This account, which first appeared in print in 1853, attributes to Webster, in closing, the following words: "I would not, for this right hand, have her [the college] turn to me and say, *Et tu quoque, mi fili!*" But we have it from an absolutely contemporary source that William Wirt closed his oration against the college with the words "*Et tu, Brute,*" which, however, were assigned by him to the ghost of Wheelock addressing Webster (Lord, p. 150). The parable is deadly. Fortunately, Mr. Beveridge's critical faculty is usually quite alert, and in his excellent account of *Gibbons v. Ogden* he punctures very neatly the old story that Webster prepared his famous argument in that case over night (p. 424-425, footnote).

One considerable disappointment with these admirable volumes I must own, for I had expected to find a final chapter devoted exclusively to an effort to assess the personality and achievement of the great chief justice. This task, however, Mr. Beveridge has chosen to leave for each reader to perform for himself, a concession for which discerning readers will not be altogether grateful. In his chapter entitled "The supreme conservative" Mr. Beveridge does indeed furnish a valuable clue, but it is rather by the way. Moreover, the designation, "supreme conservative," though in fact used with the utmost precision, will be apt to mislead many whose usage is less precise. Marshall was a *conservative*, but the two great principles he was conservative of, nationalism and individualism, were the very platform of the European liberal movement throughout the nineteenth century. Today many reckon these principles reactionary, but that is because the pursuit of happiness is no longer the purely individual enterprise it formerly was but is more of a collective enterprise — a transformation which has affected Jefferson's standing as a liberal fully as seriously as it has Marshall's.

Mr. Beveridge has done a fine, serious piece of work, a work whose value will endure as long as interest in the most distinctive of American institutions shall endure. More than that, it is a unique piece of work. For what other American public man of Mr. Beveridge's eminence has ever turned historian and man of letters with a result at all equivalent? One thinks of Mr. Roosevelt's *Winning of the west* as the most nearly comparable achievement — but then, Mr. Roosevelt was not yet a public

man when he wrote those entrancing volumes. Perhaps the hope may be voiced that Mr. Beveridge has not yet exhausted his evident versatility.

EDWARD S. CORWIN

Lemuel Shaw. Chief justice of the supreme judicial court of Massachusetts, 1830-1860. By Frederic Hathaway Chase. (Boston: Houghton Mifflin company, 1918. 330 p. \$2.00 net)

It was, of course, inevitable that Mr. Chase should begin his excellent biography of Chief Justice Shaw with some such words as the following: "It is doubtful if the country has ever seen a more brilliant group of lawyers than was found in Boston during the first half of the last century." The statement is quite true, and none the less so because it could have been made with equal propriety of a half dozen other cities of the period. The fifty years from 1800 to 1850 was the golden age of the American bar.

Mr. Chase's volume lacks brilliancy but more than compensates for this deficiency with its qualities of directness, concreteness, and solidity — qualities admirably adapted to its theme. Shaw is presented in all the relations of life, as the dutiful son, the diligent student, the hard-working, conscientious attorney, the learned judge, dominating his bench without domineering over it, the devoted husband, the considerate father, never losing touch with or interest in the concerns of his children. The picture is a gracious one, and Mr. Chase leaves us no doubt that it is a good likeness.

Mr. Chase's assessment of Shaw's actual contribution to the law is unfortunately less successful. Chapter VIII, entitled "Shaw's part in the development of the law," is good so far as it goes, but it is altogether inadequate, particularly in the matter of background and comparison; and chapter VI dealing with "Constitutional law" is at points misleading. As a loyal son of Harvard it behooved Mr. Chase not to extend his reading on the subject of judicial review beyond the writings of J. B. Thayer, and the effect of his self-denial is evident in his treatment of this important subject (p. 147 ff.). His later dictum (p. 159) that Shaw's "influence on the development of constitutional law, it is safe to say, has been second only to Marshall's" is of a like parochial provenance. Shaw's influence on the origins of our constitutional law was not negligible, but it was vastly less important than Kent's, for instance, and his contribution to the *present content* of this body of jurisprudence is comparatively slight.

It is interesting to compare Marshall and Shaw as judicial stylists. Both insisted on stripping questions of their complexities and reducing them to basic principles; both had a scorn of precedents; the opinions of both were discursive, though Shaw's were the more so. Marshall's